

**IN THE SUPREME COURT OF GHANA
ACCRA – AD 2012**

WRIT TO INVOKE THE ORIGINAL JURISDICTION

BETWEEN:

ERIC DELANYO ALIFO

-- PLAINTIFF

VRS.

1. THE HONOURABLE ATTORNEY GENERAL

2. THE INSPECTOR GENERAL OF POLICE (IGP)

-- DEFENDANTS

TO:

THE HONOURABLE ATTORNEY GENERAL AND THE INSPECTOR GENERAL OF POLICE (IGP); IN THE NAME OF THE REPUBLIC OF GHANA you are hereby commanded within fourteen days after the service on you of the Statement of the Plaintiff's case, inclusive of the date of service that you are to file or cause to be filed for you a Statement of the Defendants' case in an action at the suit of:

ERIC DELANYO ALIFO

THE RELIEFS SOUGHT ARE AS FOLLOWS:

- a) A declaration that re-arresting and charging accused persons of the same crime, and upon the same facts, for which they have previously been discharged by a court for unreasonable delay in their trial contravenes the true meaning and spirit of Article 14 (4) of the Constitution of Ghana.
- b) A declaration that the practice of using a police officer as an independent witness when another police officer writes a statement for an accused person denies the accused person fairness and justice within the contemplation of Articles 14 and 19 of the Constitution.
- c) A declaration that the presence of a police investigator during Counsel's conference with an accused person in police custody contravenes Article 19 (2) (c) of the Constitution, and denies the accused person fairness and justice.

THE ADDRESS FOR SERVICE OF PLAINTIFF IS:

HELPLAW GHANA
AT VISION FOCUS, AVENOR JUNCTION
OPPOSITE C. WOERMAN GH. LTD.
KOKOMLEMLE, ACCRA.


THE NAME AND ADDRESS FOR SERVICE OF COUNSEL FOR PLAINTIFF IS:

ERIC DELANYO ALIFO, ESQ
HELPLAW GHANA
AT VISION FOCUS, AVENOR JUNCTION
OPPOSITE C. WOERMAN GH. LTD.
KOKOMLEMLE, ACCRA.

THE NAMES AND ADDRESSES OF PERSONS AFFECTED BY THE WRIT ARE:

1. THE HONOURABLE ATTORNEY-GENERAL
ATTORNEY-GENERAL'S OFFICE
MINISTRY OF JUSTICE, ACCRA.
2. THE INSPECTOR GENERAL OF POLICE
POLICE HEADQUARTERS, CANTONMENTS
ACCRA

DATED AT HELPLAW GHANA, ACCRA THIS 9TH DAY OF JULY, 2012


**PLAINTIFF/COUNSEL
(SELF-REPRESENTATION)**

**THE REGISTRAR
THE SUPREME COURT
ACCRA**

AND SERVICE TO THE ABOVE-NAMED DEFENDANTS

**IN THE SUPREME COURT OF GHANA
ACCRA – AD 2012**

SUIT NO.

ERIC DELANYO ALIFO

-- PLAINTIFF

VRS.

1. THE HONOURABLE ATTORNEY-GENERAL

2. THE INSPECTOR GENERAL OF POLICE (IGP)

-- DEFENDANTS

**STATEMENT OF PLAINTIFF'S CASE
RULE 46 OF THE SUPREME COURT RULES, 1996, C.I. 16**

1. Plaintiff is a citizen of Ghana and the Founder of "HelpLaw Ghana" (www.help-law.org), a non-profit legal aid organization established to provide free legal services for indigent accused persons in Ghana, and he brings this action in this capacity.
2. The first Defendant is the Attorney-General of the Republic of Ghana and the principal legal advisor to the Government of Ghana and required by law to be served with all processes involving the invocation of the original jurisdiction of the Supreme Court under the Constitution. The second Defendant is the Inspector General of Police and the Head of the police service in Ghana, who is the appropriate office to receive court processes on behalf of the police service.

FACTS AND PARTICULARS

FOR RELIEF "A."

3. Article 14 (4) of the 1992 Constitution provides as follows:

Where a person arrested, restricted or detained under . . . this article is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular, conditions reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

4. The discharge of an accused person under this provision of the Constitution is normally described as "for want of prosecution." The courts would mostly consider all the circumstances of the case and conclude that there has been unreasonable delay in the trial of the accused, and the courts shall strike out the case and subsequently acquit and discharge the accused person "for want of prosecution."

5. But there could also be a discharge of an accused person under section 54 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), which provides that at any stage in a criminal case, the Attorney-General may enter a *nolle prosequi* to discontinue the case, and the accused shall be discharged immediately, and if in custody, shall be released.
6. Subsection 3 of section 54 (1) of Act 30, however, explains that the discharge of an accused person in a *nolle prosequi* application does not operate as a bar to subsequent proceedings against the accused in respect of the same case.
7. It is the contention of Plaintiff that the discharge of an accused person under Article 14 (4) of the Constitution must not be treated in the same manner as a discharge under a *nolle prosequi* application provided in section 54 (1) of Act 30.
8. It is the Plaintiff's contention that in a *nolle prosequi* application, there is no determination that the right of the accused has been abused. The discontinuance of the trial is at the instance of the prosecution and it makes sense that the prosecution may reserve the right to re-arraign the accused to go through trial.
9. Plaintiff contends that in a discharge "for want of prosecution," there is a clear case of abuse of the fundamental human right to fair and speedy trial of the accused and the discharge is a remedy for that abuse. There is therefore no remedy at all if the police could re-arrest the accused person immediately and re-arraign him, mostly in a different court, upon the same charge and facts as though the case is a fresh one.
10. It is also the contention of Plaintiff that it is an absolute disrespect for the courts for the police to re-arrest accused persons almost immediately, and sometimes in the courtroom where the accused persons have just been discharged, or in some cases, they may not be released at all by the police in any real sense after the courts have ordered that they must be discharged.
11. It is Plaintiff's contention that because the police and prosecution shall invariably re-arrest a discharged accused person, they are least worried when a court cautions that an accused person shall be discharged at a particular time for want of prosecution if state attorneys are not ready to begin his trial.
12. It is Plaintiff's case that if the courts shall determine that the right to speedy trial of an accused person has been violated under Article 14 (4) of the Constitution, and the courts shall order that the accused person must be discharged, and yet, the accused shall not be discharged, or shall be re-arrested almost immediately and put in another court, then Article 14 (4) is of no use and is redundant and may not be applied at all by the courts.
13. It is the contention of Plaintiff that the discharge of accused persons under Article 14 (4) is rather inimical to them, and greater abuse of their rights if after their discharge—when they may have already spent a number of years in custody without trial—they would be re-arrested and taken to another court to be remanded without recourse to the number of years they may have already spent in custody before their discharge.

14. Plaintiff wishes to humbly draw the Court's attention to Article 19 (7) of the 1992 Constitution, which prescribes that nobody who has been tried by a court of competent jurisdiction and has either been convicted or acquitted shall again be tried for that offence except on the order of a superior court in the course of appeal.
15. It is Plaintiff's contention that for Article 14 (4) to have a real effect as intended by the framers of the Constitution the discharge of an accused person under that provision must have the same effect as the provision in Article 19 (7). Thus, an accused person, who is discharged under Article 14 (4) must be construed as having been acquitted and must never be arrested and tried subsequently for the same crime, and upon the same facts as in the previous case in which he has been discharged.
16. Attached are **Exhibits EDA1 series** and **EDA2 series**, which show how 2 clients of Plaintiff had been discharged by courts of competent jurisdiction, but were however, not released at all, or were immediately re-arrested and remanded by another court as though they had been freshly arrested.
17. Plaintiff respectfully prays that this Honourable Court shall accordingly declare as unconstitutional, illegal, and abuse of the judicial process to oppress citizens, the practice of re-arresting accused persons for the same crime and upon the same facts when they have been discharged by a court of competent jurisdiction for want of prosecution after a long stay in custody.

FOR RELIEF "B"

18. As a general rule, a confession by an accused person out of court is hearsay evidence and is inadmissible unless it was made voluntarily, and in the presence of an independent witness. *See* sections 120 (1) and (2) of the evidence Decree, 1975 (NRCD 323).
19. Section 120 (2) of NRCD 323 has been amended by the Evidence and Criminal Procedure (Amendment) Decree, 1979 (SMCD 237) by adding that the independent witness required under section 120 of NRCD 323 does not have to be approved by the accused and does not have to be a police officer.
20. As a result of the amendment that the accused does not have to approve the independent witness, and since police officers are not barred from being independent witnesses, it has almost become the norm that all independent witnesses are police officers, who are almost always supportive of their colleague police investigators who write confession statements for accused persons.
21. In recent times, in almost all cases where accused persons appear as unable to read and write, police investigators are quick to write confession statements on behalf of the accused persons and prosecutors rush to court with these statements and invariably succeed in convicting the accused persons on the strength of such statements.

22. Listening to most of the confession statements that police investigators write on behalf of accused persons, one would easily notice that the contents could not be the true statement of the accused persons, who mostly deny having said those things to the police.
23. It would be easily noticed otherwise that if indeed, the accused persons make such statements they may have been tortured, coerced, or influenced in some other unacceptable and illegal manner to make such statements. However, the only remedy for the accused persons, when they challenge the statement, is a mini trial.
24. It is the contention of Plaintiff that a mini trial is not an adequate remedy in a situation where the legal requirement and burden on the police investigator is very simple and could be easily met by calling a colleague police officer to testify that he was an independent witness.
25. It is Plaintiff's contention further that it is an open secret that the police normally beat up suspects and ask them to speak the truth. If a police officer who could possibly be among those who would beat up a suspect to speak the truth could also be used as an independent witness while his colleague writes a confession statement for the accused, there is gross injustice to the accused person who is also very likely to lose a protest in a mini trial.
26. It is the contention of Plaintiff in effect, that the practice of using a police officer as an independent witness when another police officer writes a confession or other statement for an accused person denies the accused person justice and fair hearing guaranteed in Article 19 of the 1992 Constitution.
27. Plaintiff contends further that the practice must be proscribed and whatever legislation that supports the practice must be declared to be in contravention of Article 19 of the 1992 Constitution.
28. Plaintiff also contends that where an accused person cannot read and write English, the Accused must appoint someone he trusts to write his statement for him, or if the statement shall be written by the police, the accused must personally appoint the independent witness.

FOR RELIEF "C"

29. Plaintiff asserts that there is presently a practice in the police stations of Ghana where Counsel for an accused person in custody cannot have a conference with the accused without the presence of a police investigator.
30. It is Plaintiff's contention that this practice denies accused persons their right under Article 19 (2) (e), which provides that "a person charged with a criminal offence shall be given adequate time and facilities for the preparation of his defence."

31. Plaintiff contends that the practice of having a police investigator—who shall testify against an accused person—present during Counsel’s conference with the accused person also violates sections 93 and 100 of NRCD 323.
32. Plaintiff contends that an accused person cannot be said to be provided adequate facility to prepare his defence if an investigator is required to sit through all communication between the accused and his Counsel.
33. Plaintiff accordingly, and humbly, prays that this Honourable Court shall declare the police practice of sitting through the communication of an accused and his lawyer as unconstitutional and as denying accused persons justice and fairness.

NUMBER OF WITNESSES

Nil.

LIST OF AUTHORITIES

1. The 1992 Constitution of Ghana
2. The Criminal and Other Offences (Procedure) Act, 1960 (Act 30)
3. The Criminal Code, 1960 (Act 29).
4. The Law Officers Decree, 1974 (NRCD 279)
5. The Evidence Decree, 1975 (NRCD 323)
6. Evidence and Criminal Procedure (Amendment) Decree, 1979 (SMCD 237)
7. Essien v. The State [1965] GLR 44
8. Agyiri alias Otabil v. The Republic [1987-88] 1 GLR 58, CA
9. Kokomba v. The State [1965] GLR 698, SC
10. The State v. Banful [1965] GLR 433, SC
11. Boateng v. Yeboah [1960] GLR 17
12. Kwaku Frimpong alias Iboman v. The Republic, Criminal Appeal J3/5/2010, 18th January, 2012 (Unreported).

DATED AT HELPLAW GHANA, ACCRA THIS 9TH DAY OF JULY, 2012


PLAINTIFF/COUNSEL

**THE REGISTRAR
SUPREME COURT
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AND TO THE ABOVE-NAMED DEFENDANTS

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-- **DEFENDANTS**

**AFFIDAVIT VERIFYING THE FACTS AND PARTICULARS
RULE 46 (2) (a) OF C.I. 16**

I, ERIC DELANYO ALIFO, ESQ, make oath and say as follows:

1. That I am the Plaintiff in this suit, and the Founder of HelpLaw Ghana, a private legal aid initiative for indigent accused persons in Ghana, and the deponent herein.
2. That the facts and particulars set forth in paragraphs 1-33 of the Plaintiff's Statement of Case are true and accurate to the best of my knowledge, information, and belief.

Sworn in Accra this }
day of July, 2012 }


DEPONENT

BEFORE ME

COMMISSIONER FOR OATHS